

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT

AO 243 (Rev. 2/95)

SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>UNITED STATES DISTRICT COURT</b>		District <b>Southern District of Florida, Miami</b>
Name of Movant <b>David Israel Altman</b>		Prisoner No. <b>55477-004</b> Case No. <b>00-6284-cr-Lenard</b>
Place of Confinement <b>Low Security Correctional Institution, Butner, NC 27509</b>		<div style="font-size: 2em; font-weight: bold;">02-60601</div> <div style="font-size: 1.5em; font-weight: bold;">CIV-LENARD</div>
UNITED STATES OF AMERICA David I. Altman (name under which convicted)		
<b>MOTION</b>		
1. Name and location of court which entered the judgment of conviction under attack <u>U.S. District Court, Southern District of Florida, Miami Division, 301 N. Miami Ave. Miami, FL 33132</u>		
2. Date of judgment of conviction <u>April 10, 2000</u>		
3. Length of sentence <u>84 Months</u>		
4. Nature of offense involved (all counts) <u>Title 18, United States Code, Section 2252(a)(1) Transporting and Shipping child pornography in Interstate and Foreign Commerce.</u>		
5. What was your plea? (Check one) <div style="display: flex; justify-content: space-between;"> <div>           (a) Not guilty <input type="checkbox"/>            (b) Guilty <input checked="" type="checkbox"/>            (c) Nolo contendere <input type="checkbox"/> </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> </div> </div>		
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: <u>I plead Guilty to Count One, and the Government agreed to dismiss Count Two, Count Three, Count Four and Count Five.</u>		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) <div style="display: flex; justify-content: space-between;"> <div>           (a) Jury <input type="checkbox"/>            (b) Judge only <input type="checkbox"/> </div> <div style="text-align: center;"> <input type="checkbox"/> N/A         </div> </div>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

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9. If you did appeal, answer the following:

(a) Name of court \_\_\_\_\_ N/A

(b) Result \_\_\_\_\_ N/A

(c) Date of result \_\_\_\_\_ N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court \_\_\_\_\_ N/A

(2) Nature of proceeding \_\_\_\_\_ N/A

\_\_\_\_\_ N/A

(3) Grounds raised \_\_\_\_\_ N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☐ N/A

(5) Result \_\_\_\_\_ N/A

(6) Date of result \_\_\_\_\_ N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_ N/A

(2) Nature of proceeding \_\_\_\_\_ N/A

\_\_\_\_\_

(3) Grounds raised \_\_\_\_\_ N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ☐ No ☐ **N/A**

(5) Result **N/A**

(6) Date of result **N/A**

(c) Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐ **N/A**

(2) Second petition, etc. Yes ☐ No ☐ **N/A**

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

**N/A**

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

**Violation of Constitutional Right to Freedom of Speech**

A. Ground one:

Supporting FACTS (state *briefly* without citing cases or law)

**See: Attachment, Grounds One**

B. Ground two: **N/A**

Supporting FACTS (state *briefly* without citing cases or law)

**N/A**

C. Ground three:

**N/A**

Supporting FACTS (state *briefly* without citing cases or law)

**N/A**

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D. Ground four: N/A

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Robert Berube, 101 N.E. 3rd. Ave., Ft. Lauderdale, FL 33301

(b) At arraignment and plea Robert Berube, 101 N.E. 3rd. Ave., Ft. Lauderdale, FL 33301

(c) At trial N/A

(d) At sentencing Robert Berube, 101 N.E. 3rd. Ave., Ft. Lauderdale, FL 33301

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(e) On appeal N/A

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

N/A

(b) Give date and length of the above sentence: \_\_\_\_\_

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐ N/A

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

David D. Altman pro se  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4/25/02  
(Date)

David D. Altman  
Signature of Movant

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

DAVID I. ALTMAN  
Petitioner

v.

Case No. 00-6284-cr-Lenard

UNITED STATES OF AMERICA  
Respondant

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MOTION TO CONSIDER SUPREME COURT RULING

GROUND 1

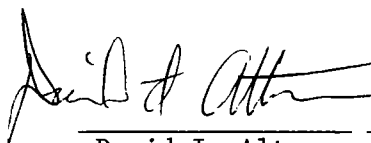
Comes the petitioner , David I. Altman , Pro se litigant , before this Honorable Court , requesting that this court consider the latest ruling concerning child pornography , handed down by the Supreme Court on Tuesday April 16 , 2002 . This ruling states that it is unconstitutional to ban child pornography that is possessed or transported involving virtual or computer generated images . This decision also determines that my Freedom of Speech has been violated . Once a law has been determined to be Unconstitutional , that determination should apply retroactively to case decisions that have gone before .

As any and all images associated with my charge are virtual or computer-generated images, I feel that my case falls within the purview of this decision. Court transcripts , along with the report given by Dr. Ross Seligson, show that I am not considered to be a pedophile . I have no actual involvement with the children depicted , nor with any other children . It has

been determined that I am little or no threat to the community . My crime was of downloading and transmitting images that were freely available on the internet . My crime is one of morality , and not so much of legality , according to this recent decision . As stated in the Presentence Investigation Report conducted by Frank Smith, there were no actual victims in this case , and I did not and do not know any of the individuals depicted.

It is my hope that the court will realize that I am being held in violation of my Constitutional Rights , and Laws of the United States, and release me based on that fact.

Respectfully,

 4/25/02

David I. Altman Date

Pro se litigant